

03-128
EX PARTE OR LATE FILED

Frank Stilwell

From: Clark, John F - WDC [JFCClark@perkinscoie.com]
Sent: Monday, February 09, 2004 2:47 PM
To: Nancy Schamu (E-mail), Jo Reese (E-mail), Sheila L Burns (E-mail), Jay Keithley (E-mail), Andrea D Williams (E-mail), Elizabeth S Merritt (E-mail), Charlene Vaughn (E-mail), Ann West Bobeck (E-mail)
Cc: Frank Stilwell
Subject: Ex Parte Notice - 2/09/04

ORIGINAL

RECEIVED

FEB 20 2004

Federal Communications Commission
Office of the Secretary



Clark, John F. - DA040370043.DOC
WDC.vcf (236 ... (65 KB)

Hello everyone,

Attached for your review is a draft ex parte notice from our conference call last Friday with the TWG Drafting Committee.

Please get me your comments as soon as you can. We will need to file this with the FCC today.

Thanks,

John

John Clark
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<<Clark, John F. - WDC.vcf>>

Please extract the attached file.

<<DA040370043.DOC>>

Pls. get comments
by 2/10/04

2

BEGIN:VCARD
VERSION:2.1
N:Clark;John
FN:Clark, John F. - WDC
ADR;WORK:;WDC
LABEL;WORK WDC
EMAIL;PREF;INTERNET:CLARQ@PerkinsCole.com
REV:20000803T182430Z
END:VCARD

February 9, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Room TW-A325
Washington, D.C. 20554

Filed via Electronic Filing

**Re: *Ex Parte* Presentation in the Proceeding Entitled "Nationwide
Programmatic Agreement Regarding the Section 106 National Historic
Preservation Act Review Process" – WT Docket No. 03-128**

Dear Ms. Dortch:

On Friday, February 6, 2004, the following individuals, representing the companies or associations indicated, all representatives of the Drafting Committee of the Telecommunications Working Group ("TWG") established by the Advisory Council on Historic Preservation ("ACHP"), conducted a telephone conference call in which an official of the Commission also participated, to discuss issues relevant to the above-identified proceeding:

| | |
|-----------------|--|
| Ann Bobeck | National Association of Broadcasters |
| Sheila Burns | Environmental Resource Management – American Cultural Resources Association ("ACRA") |
| Jay Keithley | PCIA |
| Betsy Merritt | National Trust for Historic Preservation |
| Jo Reese | Archeological Investigations Northwest, Inc. – ACRA |
| Nancy Schamu | National Conference of State Historic Preservation Officers ("NCSHPO") |
| Charlene Vaughn | |
| Andrea Williams | Cellular Telecommunications and Internet Association ("CTIA") |
| John Clark – | Perkins Coie LLP – The Wireless Coalition to Reform Section 106 |

The Commission official participating in the call was as follows:

Frank Stilwell

Wireless Telecommunications Bureau ("WTB")

In this conference call, the ACHP representative reported on a meeting the previous day among representatives of the FCC, the Advisory Council on Historic Preservation ("ACHP") and the National Conference of State Historic Preservation Officers ("NCSHPO"), being the entities that will be signatories to the Nationwide Programmatic Agreement ("NPA") that is the subject of this proceeding. That meeting was held to discuss the status of the NPA, and the timing of consideration of any changes before the delay in adoption requested by the ACHP expires.

On this conference call, the group discussed the provisions of the document entitled "ACHP Proposal for Expediting Identification and Evaluation for Visual Effects" dated January 29, 2004, which had been circulated at the TWG meeting on that date. The group also discussed a document entitled "Discussion Questions for the Drafting Group, February 6, 2004," circulated to the group for purposes of this call in an email by the ACHP representative. Copies of the email and the document are attached as Attachment 1.

The group also discussed the letter from House Resources Committee Chairman Richard Pombo and National Parks Subcommittee Chairman George Radanovich (the "Pombo/Radanovich letter") sent to John Nau, Chairman of the ACHP, expressing concern that ACHP's rules extended coverage of Section 106 to properties "only 'potentially eligible' for the National Register of Historic Places," and that this change in federal law has "particularly burdened" the wireless telecommunications industry. "

The industry representatives stated that the companies and associations represented had met together and that they would soon convey to the Drafting Committee an industry position on a proposal to address in the NPA the concerns expressed in the Pombo/Radanovich letter.

The PCIA representative stated that in this regard, the goals of industry for including a solution in the NPA to the problem identified in the Pombo/Radanovich letter, included three elements: (1) Eliminating consideration of mere visual effects to properties only potentially eligible for the National Register of Historic Places; and (2) eliminating wasteful, unnecessary and ineffectual identification of such properties in the Section 106 process; while at the same time, (3) maintaining in the NPA protection for historic properties, and for eligible properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations, from damage or destruction due to

the construction of communications towers. The PCIA representative further stated that the industry needed to be able to consult a list of properties that have been previously evaluated and confirmed to meet the federal eligibility criteria

The participants discussed the nature and number of the universe of properties identified on the various "inventory lists" maintained by State Historic Preservation Officers ("SHPOs"), which of these properties might be entitled to effects consideration, and how they might be identified.

The representative from the National Trust expressed that SHPOs should be able to include unlisted properties never determined eligible in a prior consultation but which a SHPO believes meet the criteria for eligibility for the Federal Register, in any state list of properties entitled to effects consideration under the NPA. The Trust representative described a program offered by the Ohio SHPO where the office will for a small fee of \$100 or \$150 dollars perform a review of the SHPO inventory within the Area of potential effects for a proposed project, and suggested that this might be considered for the NPA.

This notice is submitted on behalf of the non-FCC parties identified above.

Respectfully submitted,

John F. Clark
Counsel to the Wireless Coalition to Reform Section 106

JFC,jfc

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Attachment 1

----- Original Message -----

Subject: TWG Drafting Group

Date: Wed, 04 Feb 2004 18:24:09 -0500

From: Charlene Vaughn <CVAUGHN@ACHP.GOV>

ABOHECK@NAB.ORG, BAMBI@NATHPO.ORG, John Clark <CLARQ@PERKINSOIE.COM>, JAY KEITHLEY@PCIA.COM, Andrea Williams <AWILLIAMS@CTIA.ORG>, Andrea Bruns <BRUNSA@PCIA.COM>, Jo Reese <JO@AINW.COM>, GSMITH@JOHNSTONDC.COM, JIMARTIN@LSETINC.ORG, "SCHAMU@SSO.ORG" <SCHAMU@SSO.ORG>, **To:** Elizabeth Merritt <ELTSY_MERRITT@NTHP.ORG>, Sheila Burns <SBURNS@ERMSE.COM>, ALANDOWNER@NAVAJO.ORG, "Javier Marques" <JMARQUES@ACHP.GOV>, "John Fowler" <JFOWLER@ACHP.GOV>, "Klima, Don (DKLIMA@ACHP.GOV)" <DKLIMA@ACHP.GOV>

Good Evening

The ACHP would like to schedule a teleconference call this Friday, February 6th from 10:30 a.m. to 12:00 p.m. The purpose of the teleconference is to explore language for a new identification and evaluation stipulation for the FCC Nationwide Programmatic Agreement in response to the issues raised by the House Resources Committee.

We will use the concept paper prepared by the ACHP, and distributed at the January 29th Telecommunications Working Group meeting, as the framework for our discussions. However, I am amenable to hearing your suggestions regarding changes to the ACHP concept that will help us to better resolve the eligibility issues raised by the Committee.

Since we may be unable to tackle this issue fully on Friday, I suggest that we consider scheduling a follow-up meeting at the ACHP next week. Please have your calendars available so that we can discuss possible dates prior to concluding the teleconference.

In order to access the teleconference, you will need to follow the instructions described below:

- 1: Call 888-387-8686.
- 2: When the system answers, enter 7120435, then press #.
- 3: Please announce your name and organization as you enter the teleconference.
- 4: If you have difficulty accessing the call, contact the ACHP at

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202-606-8505.

Thank you for agreeing to participate in this effort. I look forward to speaking with you on Friday.

Charlene Vaughn

The following document was attached to the above email message:

DISCUSSION QUESTIONS FOR THE DRAFTING GROUP

February 6, 2004

1. What is the benefit to industry for using the services of a qualified professional to identify and evaluate properties?
2. Will the use of QPs increase the cost for complying with the terms of the FCC Nationwide PA?
3. Does the applicant give final approval regarding the scope of work proposed by the QP for completing the identification and evaluation process?
4. What criteria will be considered when determining the need for a "site visit?"
5. How will the PA define "SHPO inventory" so that it is clear what the QP is obligated to review?
6. Can the QP assume that properties included in a SHPO inventory have previously been evaluated for National Register eligibility?
7. Can a SHPO add properties for a designated area to its inventory when notified by a QP of their intent to conduct research?
8. How will the QP apply the National Register criteria to properties identified within the SHPO inventory which have not previously been determined eligible as part of a Section 106 consensus determination of eligibility?
9. Can historic properties that are listed or formally determined eligible for the National Register be re-evaluated by the QP?
10. What actions can the SHPO take when it receives a summary of eligible properties from the Applicant or QP?

11. Are there instances in which the SHPO could require that a survey be conducted because information is considered incomplete?
12. What role will FCC play in reviewing disagreements between the Applicant and the SHPO regarding eligibility determinations? How, and when, will referrals be made to the Keeper of the National Register?
13. How will the identification and evaluation stipulation address the evaluation of sites of religious and cultural significance to Indian tribes and NHOs?
14. Would QPs be authorized to contact Indian tribes and NHOs to request access to their inventory of sites eligible for listing in the National Register?
15. What opportunities will the public and other consulting parties have to respond to the Applicant's findings regarding National Register eligibility?
16. How will the revised procedures for identification and evaluation be incorporated in the Standard Documentation Form currently appended to the draft Nationwide PA?